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Daniel J. Fisher

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3M INNOVATIVE PROPERTIES COMPANY  
PO BOX 33427  
ST. PAUL, MN 55133-3427

EXAMINER

MULLER, BRYAN R

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/821,071  
Filing Date: April 08, 2004  
Appellant(s): FISHER, DANIEL J.

David B. Patchett  
Attorney  
For Appellant

**SUPPLEMENTAL EXAMINER'S ANSWER**

This is in response to the Reply brief filed April 1, 2008 providing additional arguments to the Examiner Answer mailed September 20, 2007 and Supplemental Examiner Answer mailed February 1, 2008.

### **Response to Argument**

All rejections of the claims and responses to previous arguments made in the Examiner's Answer mailed on September 20, 2007 and Supplemental Examiner Answer mailed February 1, 2008 are incorporated by reference herein.

In response to the additional arguments made by the appellant in the Reply Brief filed on April 1, 2008:

#### **I. FIRST GROUNDS OF REJECTION**

The appellant has argued that the rejection of claim 28 as being anticipated by Kleemeier is incorrect. Similar to the previous arguments made by the appellant, the argument is made that the claim limitations of claim 28 indicate that attachment surface and the non-attachment surface are co-planar at a termination point that is opposite the first major surface of the conversion pad. However, the limitation which reads:

"wherein said attachment surface and said non-attachment surface each terminate opposite said first major surface, and further wherein said attachment and non-attachment surfaces are co-planar opposite said first major surface."

clearly indicated that the attachment and non-attachment surfaces terminate opposite the first major surface and that they are separately co-planar opposite the first major surface but *does not* indicate that the attachment and non-attachment surfaces are co-planar at the termination point. As indicated previously by the Examiner, the attachment surface does have a termination point at the distal, free ends of fibers (16 and 17) and a

termination point where the fibers meet layer 14. Thus, even if the claim did require the attachment and non-attachment surfaces to be co-planar at their termination points, Kleemeier *does* still read on the claim.

The appellant has also stated that the Examiner has retracted the assertion that the appellant's definition of the attachment surface being the distal ends of the fibers would cause claim 28 to only read on non-elected species. However, the Examiner did not retract this assertion. The Examiner made the statement that the Appellant's arguments regarding the election requirement were not proper for the Appeal process because it is a petitionable matter. The Examiner maintains that the Kleemeier reference anticipates claims 28-32, and that the applicant's argued definitions, which are not actually claimed, would cause the claim 28 to read on non-elected species.

## **II. SECOND GROUNDS OF REJECTION**

The appellant argues that Kleemeier fails to teach a "conversion pad" for attaching an abrasive article to a back-up pad of a sanding tool, as argued in the appellant's Appeal Brief filed on June 18, 2007 and Reply Brief filed on November 20, 2007. The Examiner feels that this argument has already been sufficiently addressed.

The appellant further argues that the Examiner's argument in the Supplemental Examiner's Answer that the modification of attachment material, as claimed in claim 9, will provide an area that will fail to provide any attachment, is not supported. However, as the Examiner clearly stated, the appellant's original specification as well as limitations of claim 13, also depending on claim 1 do support that the limitation in claim

1 "for forming an attachment...that is weaker", does not require any attachment and may include a complete absence of material, as disclosed by the appellant in the specification and claimed in claims 9 and 13. Thus, the non-attachment region of Kleemeier does read on the appellant's claimed non-attachment region as defined by the appellant in the specification and in the dependent claims.

### **III. THIRD-SIXTH GROUNDS OF REJECTION**

No new arguments have been made by the Appellant regarding these rejections.

#### ***Conclusion***

Appellant's additional arguments filed in the Reply Brief on April 1, 2008 have been fully considered but they are not persuasive.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Bryan R Muller/

Examiner, Art Unit 3723

Conferees:

/Joseph J. Hail, III/

Supervisory Patent Examiner, Art Unit 3723

/Derris Banks/

Supervisory Patent Examiner, Art Unit 3725